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Federal Communications Commission
Office of the Secretary

0915

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Martin:

We are writing to voice our concerns about the pending merger of Sirius and XM satellite radio. While the pending transaction was recently approved by the Department of Justice, we are concerned that this merger could possibly undermine competition and harm the consumer if certain conditions are not applied, should the Commission decide to approve the transaction.

The advent of satellite radio service has been a boon for customers looking for increased variety in music, sports, and talk programming—consumers of either company have access to more than one hundred channels of streaming programming. But this merger will combine the only two satellite radio service providers in the US so consumer choice will be weakened to a certain degree. And while over-the-air radio broadcasters, internet radio, and digital television radio provide some amount of competition, they are not perfect substitutes to satellite radio. If the FCC grants this merger, the Commission would be deviating from its own rules regarding satellite licensees and intra-modal competition, which is of concern.

Given this, we respectfully urge you to consider applying certain conditions to the merger in a manner that protects the consumer by ensuring competition and fairness in the marketplace. Specifically, we recommend the Commission explore the following provisions:

- **Spectrum Divestiture:** the merged entity will hold a significant amount of radio spectrum—25 MHz in the S band. This is more than all terrestrial FM and AM spectrum combined. The Commission had issued this spectrum to two providers so allowing a single entity to hold the entire amount would essentially bar any possible new entrant into that market. The FCC should require the newly-formed XM-Sirius to divest a portion (up to half) of its spectrum holding.
- **Open Access:** the Commission should take steps to ensure that interested manufacturers are “not locked or blocked” from developing equipment to deliver the merged company’s radio satellite service. The Commission took similar steps with the recent 700 MHz auction and that, at least in part, seems applicable with

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this transaction. In addition, the merged XM-Sirius company should be prohibited from engaging in anti-competitive behavior by establishing exclusive agreements with automobile manufacturers that would exclude the integration of high-definition (HD) radio reception capability into original equipment manufacturer (OEM) radios. This will ensure that consumers continue to have choice in light of the consolidation.

- Localism Preservation: with all the variety in content that satellite radio provides there is one type that they are not able to replicate using their technology: free local programming brought to consumers via over-the-air broadcasting. One company cannot emulate the variety of local content delivered to every community by the thousands of local radio stations. The Commission should reaffirm its position that the two satellite radio providers were licensed solely as national services, and make clear that the merger company is not authorized to employ its terrestrial repeater networks to differentiate or localize content from market to market. Local news, weather, and political information are essential to our communities and should not be undermined by national programming.

We believe applying these minimal conditions to the proposed XM-Sirius merger, if the Commission approves it, is necessary to protect the public interest through preventing potential anti-competitive practices and allowing for possible future satellite radio competition. In your consideration of this issue, we hope you will critically weigh the impact this transaction will have on consumers in the radio marketplace.

Thank you for your consideration and we look forward to your reply.

Sincerely,


OLYMPIA J. SNOWE
United States Senator


CLAIRE MCCASKILL
United States Senator